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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/371,463

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GLEN H. LOWE

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9263

7590

02/08/2005

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EXAMINER

PATEL, NITIN C

ART UNIT	PAPER NUMBER
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2116

DATE MAILED: 02/08/2005

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/371,463

Applicant(s)

LOWE ET AL.

Examiner

Nitin C. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 August 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in responsive to rescinded abandonment on 23 December 2004 and response to non-final action filed on 28 April 2003.
2. Claims 1 – 21 are pending with the application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 8, and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has failed to specifically point out support for amended matter "unforced collision" to the claims 1,8,and 15 in specification.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1 – 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 21 of U.S. Patent No. 6,606,327 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention including a system and method for providing priority to a peripheral component by detecting a collision of data packets during transmission, determining a restricted back off time, and causing peripheral component to wait for restricted back off time before retransmission.
7. Each and every steps of claim 1 in application for providing priority to a peripheral component in congested network including detecting collision, determining a restricted back off time, and causing peripheral component to wait is taught by steps a-d in claim 1 of patent.
8. Network Interface Card [NIC] element of claim 2 in application is taught by claim 5 of patent.
9. A half duplex Network Interface Card [NIC] element of claim 3 in application is obvious to claim 5 of patent, as it is different types of NIC.
10. Ethernet network of claim 4 in application is taught by claim 6 of patent.
11. A half duplex Ethernet Network of claim 5 in application is obvious to claim 6 of patent, as it is different of types of network.

12. The step of determining restricted back off time based on a number generated by a random number generator function of claim 6 in application is taught by claim 4 of patent.
13. Restricted back off time associated with an Ethernet network of claim 7 in application is taught by claim 7 of patent.
14. Each and every elements of claim 8 in application for providing priority to a peripheral component in congested network are taught in claim 8 of patent.
15. Network Interface Card [NIC] element of claim 9 in application is taught by claim 12 of patent.
16. A half duplex Network Interface Card [NIC] element of claim 10 in application is obvious to claim 12 of patent, as it is different types of NIC.
17. Ethernet network of claim 11 in application is taught by claim 13 of patent.
18. A half duplex Ethernet Network of claim 12 in application is obvious to claim 13 of patent, as it is different of types of network.
19. The step of determining restricted back off time based on a number generated by a random number generator function of claim 13 in application is taught by claim 11 of patent.
20. Restricted back off time associated with an Ethernet network of claim 14 in application is taught by claim 14 of patent.
21. Each and every elements of claim 15 in application for providing priority to a peripheral component in congested network are taught in claim 15 of patent.

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22. Network Interface Card [NIC] element of claim 16 in application is taught by claim 19 of patent.
23. A half duplex Network Interface Card [NIC] element of claim 17 in application is obvious to claim 19 of patent, as it is different types of NIC.
24. Ethernet network of claim 18 in application is taught by claim 20 of patent.
25. A half duplex Ethernet Network of claim 19 in application is obvious to claim 20 of patent, as it is different of types of network.
26. The step of determining restricted back off time based on a number generated by a random number generator function of claim 20 in application is taught by claim 18 of patent.
27. Restricted back off time associated with an Ethernet network of claim 21 in application is taught by claim 21 of patent.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

28. Claims 1 – 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kuddes et al. [hereinafter as Kuddes], US Patent 5,353,287 [cited in PTO-892 of prior office action].

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29. As to claims 1, and 15, Kuddes discloses a system and method of data communications for local area network [LAN] with message priority comprising the steps of:

- a. detecting an unforced [regular] collision [14, interface unit detecting a collision] of a data packet during transmission of said data packet by a peripheral component coupled to a network [col.3, lines 19 – 25, col. 4, lines 18 – 20, col. 8, lines 6 – 8, step 340, in fig. 3];
- b. determining [back off algorithm calculating] a restricted back off time [back off period], wherein said restricted back off time is substantially equal or less [less] than a restricted time value [back off period for low priority][col.4, lines 10, col. 8, lines 6 – 67, col. 9, lines 1 - 52]; and
- c. causing [back off mode causing to wait] said peripheral component to wait said restricted back off time before trying to retransmit [before retransmission] said data packet [step 460, fig. 4, col. 9, lines 23 – 26, fig. 1, 3, 4].

30. As to claim 8, Kuddes discloses a computer system [fig. 1] comprising:

- a. a processor [17];
- b. an addressable data bus [18] coupled to said processor [17];
- c. a computer usable memory [shared memory] [col. 5, lines 21 –23] coupled to communicate with said processor for performing a method for providing priority [processor's functions, col. 5, lines 35 – 36] to a peripheral component coupled to a network [LAN], said method comprising steps of:

d. detecting an unforced [regular] collision [14, interface unit detecting a collision] of a data packet during transmission of said data packet by a peripheral component coupled to a network [col. 3, lines 19 – 25, col. 4, lines 18 – 20, col. 8, lines 6 – 8, step 340, in fig. 3];

e. determining [back off algorithm calculating] a restricted back off time [back off period], wherein said restricted back off time is substantially equal or less [less] than a restricted time value [back off period for low priority][col. 4, lines 10, col. 8, lines 6 – 67, col. 9, lines 1 - 52]; and

e. causing [back off mode causing to wait] said peripheral component to wait said restricted back off time before trying to retransmit [before retransmission] said data packet [step 460, fig. 4, col. 9, lines 23 – 26, fig. 1, 3, 4].

31. As to claims 2 – 5, 9 – 12, and 16 – 19, Kuddes discloses a message priority scheme use in local area network [LAN] operating in accordance carrier sense, multiple access/collision detect [CSMA/CD] bus access protocol [IEEE 802.3/ISO 8802-3] in a LAN station in Ethernet network therefore it teaches different peripheral components including Network Interface Card [NIC], half-duplex Network Interface Card [NIC] too [col. 3, lines 3 – 14, col. 3, lines 8 – 15].

32. As to claims 6 – 7, 13 – 14, 20 – 21, Kuddes discloses determining [calculating] restricted back off time [back off period] associated with an Ethernet network based on a number generated by a random number generator function [col. 8, lines 65 – 67, col. 9, lines 1 – 53].

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33. Applicant's arguments with respect to claims 1 -21 have been considered but are moot in view of the new ground(s) of rejection.

34. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested to the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

35. **Prior Art not relied upon:** Please refer to the references listed in attached PTO-892, which, are not relied upon for rejection since these references are relevant to the claimed invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nitin C. Patel whose telephone number is 571-272-3675. The examiner can normally be reached on 7:00 am to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on 571-272-3670. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nitin C. Patel
February 1, 2005


LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
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